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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/679,094	10/03/2003	James Bennett	102USBB02	3545		
23446	7590	01/18/2008	EXAMINER			
MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				HOPKINS, CHRISTINE D		
ART UNIT		PAPER NUMBER				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/679,094	BENNETT, JAMES
	<b>Examiner</b>	<b>Art Unit</b>
	CHRISTINE D. HOPKINS	3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 November 2007.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5, 7-15 and 17-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5, 7-15 and 17-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. This Office Action is responsive to the Amendment filed 13 November 2007. Claims 1-5, 7-15 and 17-20 are now pending. The Examiner acknowledges the amendments to claims 1, 7, 11, 17 and 20.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7-8, 11-15, and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatts et al. (U.S. Patent No. 5,183,457) in view of Sheridan (U.S. Patent No. 6,256,965). Gatts et al. (hereinafter Gatts) teach an infant bed which simulates motions, sounds and tactile sensations resembling an intrauterine environment. Regarding claims 1-5 and 8, Gatts teaches receiving a triggering event by the cradle. The triggering event disclosed by Gatts is the reduction of ambient light, which is detected automatically by solar sensor **4**, or is controlled by a manual switch (col. 2, lines 37-43). The triggering event generates, upon such detection, nighttime motions or sounds of the mother, which constitute “a plurality of playback operating modes” such as a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode (col. 9, lines 56-68 - col. 10, lines 1-11). Heartbeat sounds (or other sounds indicative of a uterine sound) may also be manipulated (increased) and

generated by the cradle (col. 9, lines 56-64) via a sound transducer **2**, which includes a tape player or similar sound generating device (col. 3, lines 52-67). The sound emitted from the device may also be varied (col. 2, lines 17-24) and may further comprise miscellaneous sounds such as music or house sounds in accordance with claim 7 (col. 3, lines 58-65). The cradle will continue in a “normal operation mode” as daytime transitions to nighttime or vice versa. While Gatts teaches the method as claimed, Gatts fails to teach such a method carried out by an audio enabled toy comprising a stuffed animal. Sheridan teaches a bedding or similar article to hold an infant or child which also takes the shape of a stuffed animal to cradle the user into relaxation (col. 1, lines 34-55). Regarding the “audio enabled toy” of claim 1, Sheridan further teaches the generation of a human heartbeat or mother’s voice for pacifying a child produced by a sound generator (as also disclosed by Gatts and the instant application) which may be incorporated within the toy bed (col. 6, lines 60-67). Therefore, at the time of the invention it would have been obvious to one having ordinary skill in the art to have utilized a sound generating device for an infant as suggested by Gatts, within a bedding device resembling a stuffed animal as suggested by Sheridan, for soothing and calming an infant.

Regarding claims 11-15 and 18, Gatts teaches a solar sensor **4** (automatically triggered or controlled by a manual switch) which works in conjunction with electronic circuitry in module **28** to detect and increase or reduce ambient light according to a daytime or nighttime scheme. Upon such detection, nighttime motions or sounds of the mother are played, dependent upon the operating program initiated, which constitute “a

plurality of playback operating modes" such as a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode (col. 9, lines 56-68 - col. 10, lines 1-11). Heartbeat sounds (or other sounds indicative of a uterine sound) may also be manipulated (increased) and generated by the cradle (col. 9, lines 56-64) via a speaker or sound transducer **2**, which includes a tape player or similar sound-generating device (col. 3, lines 52-67). The sound emitted from the device may also be varied (col. 2, lines 17-24) and may further comprise miscellaneous sounds such as music or house sounds in accordance with claim 17 (col. 3, lines 58-65). The cradle will continue in a "normal operation mode" as daytime transitions to nighttime or vice versa. The system may be controlled by a timer (col. 7, lines 10-13) and the volume varied (col. 2, lines 17-24) from within the device. While Gatts teaches the system as claimed, Gatts fails to teach such a system embodied in an audio enabled toy comprising a stuffed animal. Sheridan teaches a bedding or similar article to hold an infant or child which also takes the shape of a stuffed animal to cradle the user into relaxation (col. 1, lines 34-55). Regarding the "audio enabled toy" of claim 11, Sheridan further teaches the generation of a human heartbeat or mother's voice for pacifying a child produced by a sound generator (as also disclosed by Gatts and the instant application) which may be incorporated within the toy bed (col. 6, lines 60-67). Therefore, at the time of the invention it would have been obvious to one having ordinary skill in the art to have utilized a sound generating device for an infant as suggested by Gatts, within a bedding device resembling a stuffed animal as suggested by Sheridan, for soothing and calming an infant.

4. Claims 9-10 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatts et al. (U.S. Patent No. 5,183,457) in view of Sheridan (U.S. Patent No. 6,256,965) and further in view of Kulick (U.S. Patent No. 6,692,330). Regarding claims 9 and 10, the combination of Gatts and Sheridan fails to teach a microphone for generating a sound. The combination teaches a device for recording numerous sounds indicative of a mother for soothing an infant, however, the combination does not specifically teach a microphone for recording such noises on the device. Kulick teaches an infant toy having a similar sound-generating device **18** equipped with an audio memory **20** for storing sounds recorded by microphone **24** (col. 2, lines 66-67 - col. 3, lines 1-23). The toy of Kulick is utilized for soothing an infant as also disclosed by the combination of Gatts and Sheridan, by generating pre-recorded music or natural sounds. Therefore, at the time of the invention it would have been obvious to one having ordinary skill in the art to have equipped a sound-generating device as disclosed by the combination of Gatts and Sheridan, with a microphone and memory component as suggested by Kulick, for playing sounds which simulate a natural environment and promote calming of an infant.

Regarding claim 19, the combination of Gatts and Sheridan fails to teach a memory coupled to the processing circuit. The combination teaches a device for recording numerous sounds indicative of a mother for soothing an infant, however, the combination does not specifically teach a memory coupled to the processing circuit for storing such noises on the device. Kulick teaches an infant toy having a similar sound-generating device **18** equipped with an audio memory **20** for storing sounds recorded by

microphone **24** (col. 2, lines 66-67 - col. 3, lines 1-23). The toy of Kulick is utilized for soothing an infant as also disclosed by the combination of Gatts and Sheridan by generating pre-recorded music or natural sounds. Therefore, at the time of the invention it would have been obvious to one having ordinary skill in the art to have equipped a sound-generating device as disclosed by the combination of Gatts and Sheridan, with a memory component coupled to a processing circuit as suggested by Kulick, for playing sounds which simulate a natural environment and promote calming of an infant.

Regarding claim 20, Gatts teaches a manual switch coupled to a processing circuit, a time and a volume control unit coupled to the processing circuit and a mode control unit **28** coupled to the processing circuit. A microprocessor generates nighttime motions or sounds of the mother, which constitute “a plurality of playback operating modes” such as a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode (col. 9, lines 56-68 - col. 10, lines 1-11). The sound is output through a speaker **2** (col. 7, lines 30-39). However, Gatts fails to specifically teach such a system embodied in a “toy.” Regarding the “audio enabled toy” of claim 20, Sheridan further teaches the generation of a human heartbeat or mother’s voice for pacifying a child produced by a sound generator (as also disclosed by Gatts and the instant application) which may be incorporated within the toy bed (col. 6, lines 60-67). However, the combination fails to teach a microphone and memory coupled to the processing circuitry. Kulick teaches an infant toy having a similar sound-generating device **18** equipped with an audio memory **20** for storing sounds recorded by

microphone **24** (col. 2, lines 66-67 - col. 3, lines 1-23). The toy of Kulick is utilized for soothing an infant as also disclosed by the combination of Gatts and Sheridan by generating pre-recorded music or natural sounds. Therefore, at the time of the invention it would have been obvious to one having ordinary skill in the art to have equipped a sound-generating device for calming an infant as disclosed by the combination of Gatts and Sheridan, with a microphone and memory component as suggested by Kulick, for recording and playing sounds which simulate a natural environment and promote pacification of an infant.

### ***Response to Arguments***

5. Applicant's arguments filed 13 November 2007 with respect to the rejection of claims 1-5, 7-8, 11-15 and 17-18 under 35 U.S.C. 103(a) citing Gatts et al. ('457) in view of Cohen ('867) have been considered but are moot in view of the new grounds of rejection under 35 U.S.C. 103(a) citing Gatts et al. ('457) in view of Sheridan ('965). Applicant contends that Gatts does not teach a plurality of playback operating modes comprising a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode, rather Gatts discloses a nighttime playback operating mode and a daytime playback operating mode. However, this argument is not persuasive. The daytime playback operating mode of Gatts is interpreted as the increasing heartbeat mode because the more light that is detected by the sensor, the more the beat rate of the heart, and its accompanying sound, is increased. Once the preset daytime value is reached, the heartbeat mode becomes constant, thus defining a constant heartbeat

mode. And likewise, as less light is detected, the system increments the heart beat and its accompanying sounds to decrease, thus providing a nighttime mode or “decreasing heartbeat mode” (col. 9, lines 56-68 - col. 10, lines 1-11).

Applicant further contends that Cohen ('867) does not disclose a stuffed animal, however this argument is moot in view of the new rejection under 35 U.S.C. 103(a) citing Gatts et al. ('457) in view of Sheridan ('965).

6. Applicant's arguments filed 13 November 2007 with respect to the rejection of claims 9-10 and 19-20 under 35 U.S.C. 103(a) citing Gatts et al. ('457) in view of Cohen ('867) and further in view of Kulick ('330) have been considered but are moot in view of the new grounds of rejection under 35 U.S.C. 103(a) citing Gatts ('457) in view of Sheridan ('965) and further in view of Kulick ('330). Applicant contends that nowhere in Kulick is there any mention of a plurality of playback operating modes, a constant heartbeat mode, an increasing heartbeat mode and/or a decreasing heartbeat mode. However, this argument is not persuasive because the deficiency of Gatts and Cohen lies in the lack of a microphone coupled to the toy and not the playback operating modes. Kulick remedies this deficiency with an infant toy having a similar sound-generating device **18** as Gatts, and is further equipped with an audio memory **20** for storing sounds recorded by microphone **24** (col. 2, lines 66-67 - col. 3, lines 1-23). The toy of Kulick is likewise utilized for soothing an infant as also disclosed by the combination of Gatts and Sheridan by generating pre-recorded music or natural sounds.

Therefore, Kulick is found to remedy the deficiency of Gatts and Cohen (or Sheridan) since there exists appropriate motivation for combining the references.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE D. HOPKINS whose telephone number is (571)272-9058. The examiner can normally be reached on Monday-Friday, 7 a.m.-3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. D. H./  
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